of § 1464 of the Compiled Statutes of 1913 to include criminal trials so that the existing and not merely the former law of a state in which a federal court is held may be administered. And the amendment may well be carried even further by adopting an independent statute for the federal courts of the same scope as that of § 832 of the New York Code of Civil Procedure. It is stated in the opinion in the Maxey case that the disqualification for infamy by conviction of crime has not been removed by statute in Arkansas except partially in civil cases. A mere extension of § 1464 of the Federal Compiled Statutes in its present form to include criminal trials would not help the existing situation as to trials in ultra conservative states if the convictions relied on for disqualification had themselves been obtained in federal courts.

The following language from the opinion in Maxey *v.* United States (supra), which would seem true now as it was at the time of that decision, may be quoted: "It is urged in the brief of counsel for the United States that Congress has passed no law making the conviction of crime a disqualification. This is an erroneous view to take of the matter. The common law prevails until Congress shall decide otherwise. The courts of the United States were organized and their jurisdiction defined, but the matter of the competency of witnesses has never been legislated upon by Congress except as to civil cases, and there is no rule upon the subject unless we go to the common law.

Nuisance—Joint Liability—(Several Liability of Persons Separately Contributing to the Same Nuisance.)—In Key *v.* Armour Fertilizer Works, in the Court of Appeals of Georgia (July, 1916, 89 S. E. 593), it was laid down in the syllabus by the court that where two "separate and distinct corporations in proximity to each other operate their respective and separate plants for manufacturing fertilizers, and from each plant noxious and poisonous gases are discharged into the atmosphere and invade the premises of a nearby resident, and so poison and befoul the air therein as to cause sickness and death in his family, and otherwise to injure him, and to create an actionable nuisance, but where there is no common ownership or operation of the plants, no community of interest, and no common design, purpose, concert or joint action, a suit by the adjacent resident against the two corporations jointly for damage caused by their respective acts thus separately committed cannot be maintained," each being liable for its proportion of the damages only. The action was brought against two such corporations and a demurrer is sustained on the ground of improper joinder of parties and of causes of action. The court said in part:

"Conceding that an actionable nuisance appeared, and that both

of the defendants contributed to this nuisance, each company was liable for its proportionate part of the damage only. This precise point seems never to have been passed upon by an appellate court in Georgia, but it has been definitely settled in other states. In City of Mansfield *v.* Bristor (76 Ohio St., 270, 81 N. E. 631, 10 L. R. A., N. S., 806, 118 Am. St. Rep. 852, 10 Ann. Cas. 767) the Supreme Court of Ohio held that:

'Where different parties discharge sewage and filth into a stream, which intermingle and cause an actionable nuisance, they are not jointly liable for damages when there is no common design or concert of action, but each is liable only for his proportion of the damages.'

In Swain *v.* Tennessee Copper Co. (111 Tenn. 403, 78 S. W. 93) the ruling of the Supreme Court of Tennessee was in substance that:

'Where two distinct corporations in proximity to each other operate their respective and separate plants for reducing and converting copper ore into metal nuggets or commercial copper, from each of which are emitted immense volumes of noxious, foul and poisonous smoke and gases which afterwards indistinguishably mingle, commingle and intermingle in a cloud of noxious, deadly and poisonous vapors, creating an actionable nuisance, but there is no common ownership or operation of the plants, no community of interest, no common design, purpose, concert or joint action, a suit by an adjoining or adjacent property owner against them jointly for damages caused by their wrongful acts so separately committed is not maintainable.'

See also to the same effect 38 Cyc. 484, 485; Schneider *v.* City of Augusta (118 Ga. 610, 45 S. E. 459), Howe *v.* Bradstreet Co. (136 Ga. 564, 69 S. E. 1082, Ann. Cas. 1912A, 214)

It is true that the Supreme Courts of West Virginia, Indiana, Texas and possibly some other states have made contrary rulings, to the effect that 'under such circumstances independent tort feasors are jointly liable. We think, however, that this view is unsound, and that the weight of authority is against it. At any rate, the decisions of our own Supreme Court, by which we are bound, are, in principle at least, to the effect that in such cases a joint action against independent tort feasors will not lie."

The text of 38 Cyc., at page 484, above referred to, is as follows:

"As applicable to the entire range of tort actions the proposition may be stated that where wrongdoers have not acted in concert, and separate and distinct injuries are caused by the act or neglect of each, the liability is several only (Citing, along with authorities from other states, Mooney *v.* Third Avenue Railroad, 2 N. Y. City Court, 366.) Thus where animals belonging to several owners do damage together, there being a separate trespass or wrong, each owner is generally liable separately only for the injury done by his animal. (Citing,

besides decisions in other states, Partenheimer *v.* Van Order, 20 Barb. 479; Auchmuty *v.* Ham, 1 Den. 495; Van Steenburgh *v.* Tobias, 17 Wend. 562.) The fact that it is difficult to separate the injury done by each from that done by the others furnishes no reason for holding that one tort feasor should be liable for the acts of others with whom he is not acting in concert. Furthermore, if defendant's act was several when it was committed it cannot be made joint because of a consequence which followed in connection with the result of the same or similar act done by others. (Citing, together with authorities from other states, Chipman *v.* Palmer, 77 N. Y. 51.) But, although such wrongdoers may not be liable to a joint action at law for damages, the equitable remedy of injunction may be sought against all of them jointly."

In a footnote to the above extract from Cyc. it is said that "a joint liability, however, may exist, as in the case of a trespass by cattle, which, although owned severally, are under the joint control of all the owners." (Citing, in addition to decisions in other jurisdictions, Harrison *v.* McClellan, 64 Misc. 430, reversed on other grounds in 137 N. Y. App. Div. 508; Sickles *v.* Gould, 51 How. Pr. 21.)